



General Assembly

Substitute Bill No. 1185

January Session, 2011

* ____SB01185APP__050511____ *

**AN ACT CONCERNING STATE PAYMENTS TO NURSING HOMES
AND THE DUTIES OF NURSING HOME RECEIVERS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (4) of subsection (f) of section 17b-340 of the
2 general statutes is repealed and the following is substituted in lieu
3 thereof (*Effective July 1, 2011*):

4 (4) (A) For the fiscal year ending June 30, 1992, [(A)] (i) no facility
5 shall receive a rate that is less than the rate it received for the rate year
6 ending June 30, 1991; [(B)] (ii) no facility whose rate, if determined
7 pursuant to this subsection, would exceed one hundred twenty per
8 cent of the state-wide median rate, as determined pursuant to this
9 subsection, shall receive a rate which is five and one-half per cent more
10 than the rate it received for the rate year ending June 30, 1991; and
11 [(C)] (iii) no facility whose rate, if determined pursuant to this
12 subsection, would be less than one hundred twenty per cent of the
13 state-wide median rate, as determined pursuant to this subsection,
14 shall receive a rate which is six and one-half per cent more than the
15 rate it received for the rate year ending June 30, 1991. For the fiscal
16 year ending June 30, 1993, no facility shall receive a rate that is less
17 than the rate it received for the rate year ending June 30, 1992, or six
18 per cent more than the rate it received for the rate year ending June 30,
19 1992. For the fiscal year ending June 30, 1994, no facility shall receive a

20 rate that is less than the rate it received for the rate year ending June
21 30, 1993, or six per cent more than the rate it received for the rate year
22 ending June 30, 1993. For the fiscal year ending June 30, 1995, no
23 facility shall receive a rate that is more than five per cent less than the
24 rate it received for the rate year ending June 30, 1994, or six per cent
25 more than the rate it received for the rate year ending June 30, 1994.
26 For the fiscal years ending June 30, 1996, and June 30, 1997, no facility
27 shall receive a rate that is more than three per cent more than the rate it
28 received for the prior rate year. For the fiscal year ending June 30, 1998,
29 a facility shall receive a rate increase that is not more than two per cent
30 more than the rate that the facility received in the prior year. For the
31 fiscal year ending June 30, 1999, a facility shall receive a rate increase
32 that is not more than three per cent more than the rate that the facility
33 received in the prior year and that is not less than one per cent more
34 than the rate that the facility received in the prior year, exclusive of
35 rate increases associated with a wage, benefit and staffing
36 enhancement rate adjustment added for the period from April 1, 1999,
37 to June 30, 1999, inclusive. For the fiscal year ending June 30, 2000,
38 each facility, except a facility with an interim rate or replaced interim
39 rate for the fiscal year ending June 30, 1999, and a facility having a
40 certificate of need or other agreement specifying rate adjustments for
41 the fiscal year ending June 30, 2000, shall receive a rate increase equal
42 to one per cent applied to the rate the facility received for the fiscal
43 year ending June 30, 1999, exclusive of the facility's wage, benefit and
44 staffing enhancement rate adjustment. For the fiscal year ending June
45 30, 2000, no facility with an interim rate, replaced interim rate or
46 scheduled rate adjustment specified in a certificate of need or other
47 agreement for the fiscal year ending June 30, 2000, shall receive a rate
48 increase that is more than one per cent more than the rate the facility
49 received in the fiscal year ending June 30, 1999. For the fiscal year
50 ending June 30, 2001, each facility, except a facility with an interim rate
51 or replaced interim rate for the fiscal year ending June 30, 2000, and a
52 facility having a certificate of need or other agreement specifying rate
53 adjustments for the fiscal year ending June 30, 2001, shall receive a rate
54 increase equal to two per cent applied to the rate the facility received

55 for the fiscal year ending June 30, 2000, subject to verification of wage
56 enhancement adjustments pursuant to subdivision (15) of this
57 subsection. For the fiscal year ending June 30, 2001, no facility with an
58 interim rate, replaced interim rate or scheduled rate adjustment
59 specified in a certificate of need or other agreement for the fiscal year
60 ending June 30, 2001, shall receive a rate increase that is more than two
61 per cent more than the rate the facility received for the fiscal year
62 ending June 30, 2000. For the fiscal year ending June 30, 2002, each
63 facility shall receive a rate that is two and one-half per cent more than
64 the rate the facility received in the prior fiscal year. For the fiscal year
65 ending June 30, 2003, each facility shall receive a rate that is two per
66 cent more than the rate the facility received in the prior fiscal year,
67 except that such increase shall be effective January 1, 2003, and such
68 facility rate in effect for the fiscal year ending June 30, 2002, shall be
69 paid for services provided until December 31, 2002, except any facility
70 that would have been issued a lower rate effective July 1, 2002, than for
71 the fiscal year ending June 30, 2002, due to interim rate status or
72 agreement with the department shall be issued such lower rate
73 effective July 1, 2002, and have such rate increased two per cent
74 effective June 1, 2003. For the fiscal year ending June 30, 2004, rates in
75 effect for the period ending June 30, 2003, shall remain in effect, except
76 any facility that would have been issued a lower rate effective July 1,
77 2003, than for the fiscal year ending June 30, 2003, due to interim rate
78 status or agreement with the department shall be issued such lower
79 rate effective July 1, 2003. For the fiscal year ending June 30, 2005, rates
80 in effect for the period ending June 30, 2004, shall remain in effect until
81 December 31, 2004, except any facility that would have been issued a
82 lower rate effective July 1, 2004, than for the fiscal year ending June 30,
83 2004, due to interim rate status or agreement with the department shall
84 be issued such lower rate effective July 1, 2004. Effective January 1,
85 2005, each facility shall receive a rate that is one per cent greater than
86 the rate in effect December 31, 2004. Effective upon receipt of all the
87 necessary federal approvals to secure federal financial participation
88 matching funds associated with the rate increase provided in this
89 subdivision, but in no event earlier than July 1, 2005, and provided the

90 user fee imposed under section 17b-320 is required to be collected, for
91 the fiscal year ending June 30, 2006, the department shall compute the
92 rate for each facility based upon its 2003 cost report filing or a
93 subsequent cost year filing for facilities having an interim rate for the
94 period ending June 30, 2005, as provided under section 17-311-55 of the
95 regulations of Connecticut state agencies. For each facility not having
96 an interim rate for the period ending June 30, 2005, the rate for the
97 period ending June 30, 2006, shall be determined beginning with the
98 higher of the computed rate based upon its 2003 cost report filing or
99 the rate in effect for the period ending June 30, 2005. Such rate shall
100 then be increased by eleven dollars and eighty cents per day except
101 that in no event shall the rate for the period ending June 30, 2006, be
102 thirty-two dollars more than the rate in effect for the period ending
103 June 30, 2005, and for any facility with a rate below one hundred
104 ninety-five dollars per day for the period ending June 30, 2005, such
105 rate for the period ending June 30, 2006, shall not be greater than two
106 hundred seventeen dollars and forty-three cents per day and for any
107 facility with a rate equal to or greater than one hundred ninety-five
108 dollars per day for the period ending June 30, 2005, such rate for the
109 period ending June 30, 2006, shall not exceed the rate in effect for the
110 period ending June 30, 2005, increased by eleven and one-half per cent.
111 For each facility with an interim rate for the period ending June 30,
112 2005, the interim replacement rate for the period ending June 30, 2006,
113 shall not exceed the rate in effect for the period ending June 30, 2005,
114 increased by eleven dollars and eighty cents per day plus the per day
115 cost of the user fee payments made pursuant to section 17b-320
116 divided by annual resident service days, except for any facility with an
117 interim rate below one hundred ninety-five dollars per day for the
118 period ending June 30, 2005, the interim replacement rate for the
119 period ending June 30, 2006, shall not be greater than two hundred
120 seventeen dollars and forty-three cents per day and for any facility
121 with an interim rate equal to or greater than one hundred ninety-five
122 dollars per day for the period ending June 30, 2005, the interim
123 replacement rate for the period ending June 30, 2006, shall not exceed
124 the rate in effect for the period ending June 30, 2005, increased by

eleven and one-half per cent. Such July 1, 2005, rate adjustments shall remain in effect unless [(i)] the federal financial participation matching funds associated with the rate increase are no longer available; or [(ii)] the user fee created pursuant to section 17b-320 is not in effect. For the fiscal year ending June 30, 2007, each facility shall receive a rate that is three per cent greater than the rate in effect for the period ending June 30, 2006, except any facility that would have been issued a lower rate effective July 1, 2006, than for the rate period ending June 30, 2006, due to interim rate status or agreement with the department, shall be issued such lower rate effective July 1, 2006. For the fiscal year ending June 30, 2008, each facility shall receive a rate that is two and nine-tenths per cent greater than the rate in effect for the period ending June 30, 2007, except any facility that would have been issued a lower rate effective July 1, 2007, than for the rate period ending June 30, 2007, due to interim rate status or agreement with the department, shall be issued such lower rate effective July 1, 2007. For the fiscal year ending June 30, 2009, rates in effect for the period ending June 30, 2008, shall remain in effect until June 30, 2009, except any facility that would have been issued a lower rate for the fiscal year ending June 30, 2009, due to interim rate status or agreement with the department shall be issued such lower rate. For the fiscal years ending June 30, 2010, and June 30, 2011, rates in effect for the period ending June 30, 2009, shall remain in effect until June 30, 2011, except any facility that would have been issued a lower rate for the fiscal year ending June 30, 2010, or the fiscal year ending June 30, 2011, due to interim rate status or agreement with the department, shall be issued such lower rate. Interim rates may take into account reasonable costs incurred by a facility, including wages and benefits.

(B) The Commissioner of Social Services shall add fair rent increases to any other rate increases established pursuant to this subdivision for a facility which has undergone a material change in circumstances related to fair rent, except for the fiscal year ending June 30, 2010, and the fiscal year ending June 30, 2011, such fair rent increases shall only be provided to facilities with an approved certificate of need pursuant

159 to section 17b-352, 17b-353, 17b-354 or 17b-355. [Interim rates may take
160 into account reasonable costs incurred by a facility, including wages
161 and benefits.] For the fiscal year ending June 30, 2012, in the event that
162 the Commissioner of Social Services has revised a facility's rate
163 pursuant to the provisions of subsections (j) and (k) of section 17b-340,
164 as amended by this act, the commissioner shall add fair rent increases
165 to the facility's revised rate.

166 Sec. 2. Section 17b-340 of the general statutes is amended by adding
167 subsections (j) and (k) as follows (*Effective July 1, 2011*):

168 (NEW) (j) (1) Notwithstanding any provision of this section, the
169 Commissioner of Social Services may issue a revised, increased rate to
170 a licensed chronic and convalescent nursing home or rest home with
171 nursing supervision if: (A) The facility's total occupancy percentage
172 was less than ninety-five per cent during the six-month period
173 immediately preceding the date on which the facility files an
174 application for a rate revision pursuant to this subsection and the
175 facility agrees to reduce its licensed bed capacity; (B) the facility
176 requests additional reimbursement for fair rent or moveable
177 equipment improvements; or (C) the facility requests additional
178 reimbursement to implement a business plan to develop enhanced
179 community-based services or services for residents with special needs,
180 provided (i) the facility has submitted a business plan that meets
181 applicable requirements established by the commissioner pursuant to
182 this subsection; and (ii) the fiscal impact of any approved rate revision
183 is projected as Medicaid budget neutral at the end of the five-year
184 period following the date of a facility's request, or, if the fiscal impact
185 is not projected to be Medicaid budget neutral, the facility's business
186 plan proposes to meet an identified unmet need.

187 (2) On or before October 1, 2011, the Commissioner of Social
188 Services shall develop and publish an application process for rate
189 revision requests authorized pursuant to this subsection. The
190 commissioner shall minimally require that an applicant submit a
191 facility business plan that addresses: (A) The proposed rate increase;

192 (B) facility occupancy statistics for the six months preceding the date of
193 the application and occupancy statistics projected over the next five
194 years, assuming the facility's application is granted; (C) any proposed
195 bed reductions; (D) the effect of the proposal on facility staffing and
196 operations; (E) the discharge plan for affected residents; (F) a
197 description of any proposed fair rent or moveable equipment
198 improvements, if applicable; (G) a description of any proposed
199 enhanced community-based services, if applicable; and (H) a
200 description of any proposed services for residents with special needs,
201 if applicable. Any applicant with capital improvement requests that
202 exceed the certificate of need dollar thresholds set forth in section 17b-
203 353 shall be subject to the requirements of section 17b-353. If a facility
204 requesting a rate increase under this subsection requires a waiver from
205 the Commissioner of Public Health of any provision of section 19-13-
206 D8t of the regulations of Connecticut state agencies and such facility
207 has submitted to said commissioner a written waiver request, said
208 commissioner shall issue a final decision on the facility's waiver
209 request not later than forty-five days after the commissioner's receipt
210 of such request.

211 (3) The Commissioner of Social Services shall approve or deny a
212 facility's application for a rate revision not later than forty-five days
213 after the date of the commissioner's receipt of such application. Any
214 approved revised rate shall be a substitute for the prospective rate
215 determined pursuant to this section and shall not be an interim rate.

216 (4) If a facility's revised rate approval involves a reduction in
217 licensed bed capacity, the facility may elect to implement the approved
218 bed reduction by either: (A) A permanent decertification of the beds, or
219 (B) a temporary reduction in licensed bed capacity. If a facility elects to
220 permanently decertify the beds, the Commissioner of Social Services
221 may permit any such decertified beds that were also Medicaid certified
222 to be relocated in accordance with the provisions of subdivision (3) of
223 subsection (a) of section 17b-354. If a facility elects to temporarily
224 reduce its licensed capacity, it may request, not more than once in any

225 twelve-month period, permission from the commissioner to recertify
226 all or a portion of such licensed bed capacity. In considering any
227 request for recertification, the commissioner shall consider the bed
228 need or service capacity of the facility. The commissioner shall
229 approve or deny any request for recertification of licensed bed capacity
230 not later than forty-five days after the commissioner's receipt of the
231 facility's request. If the commissioner grants a request for
232 recertification of licensed beds, the commissioner may reduce any
233 revised rate previously approved for such facility that had been
234 conditioned upon the facility reducing the number of licensed beds.
235 Such rate reduction shall take effect on the date the facility's license is
236 revised to include the recertified beds.

237 (NEW) (k) The Commissioner of Social Services shall, effective on
238 the date the court appoints a receiver for a facility pursuant to section
239 19a-543, revise the Medicaid rate of such facility placed in receivership,
240 to ensure that the operating portion of such facility's Medicaid rate,
241 when calculated in accordance with section 17b-340, as amended by
242 this act, does not exceed the operating portion of the rate of any other
243 similarly licensed facility located within a fifteen mile radius of the
244 facility placed in receivership, irrespective of whether the facility
245 placed in receivership is paid in accordance with the facility's base rate
246 or through advances to the receiver, and excludes the costs of the
247 receiver and any oversight costs incurred by the facility placed in
248 receivership that may be required by the Commissioner of Public
249 Health.

250 Sec. 3. Subsection (a) of section 19a-545 of the general statutes is
251 repealed and the following is substituted in lieu thereof (*Effective July*
252 *1, 2011*):

253 (a) A receiver appointed pursuant to the provisions of sections 19a-
254 541 to 19a-549, inclusive, in operating such facility, shall have the same
255 powers as a receiver of a corporation under section 52-507, except as
256 provided in subsection (c) of this section and shall exercise such
257 powers to remedy the conditions which constituted grounds for the

258 imposition of receivership, assure adequate health care for the patients
259 and preserve the assets and property of the owner. If a facility is
260 placed in receivership it shall be the duty of the receiver to notify
261 patients and family, except where medically contraindicated, that the
262 facility has been placed in receivership. The receiver shall also notify
263 any person seeking admission as a patient to the facility and such
264 person's family, to the extent known, that such facility has been placed
265 in receivership. Such receiver may correct or eliminate any deficiency
266 in the structure or furnishings of the facility which endangers the
267 safety or health of the residents while they remain in the facility,
268 provided the total cost of correction does not exceed three thousand
269 dollars. The court may order expenditures for this purpose in excess of
270 three thousand dollars on application from such receiver. If any
271 resident is transferred or discharged such receiver shall provide for: (1)
272 Transportation of the resident and such resident's belongings and
273 medical records to the place where such resident is being transferred
274 or discharged; (2) aid in locating an alternative placement and
275 discharge planning in accordance with section 19a-535; (3) preparation
276 for transfer to mitigate transfer trauma, including but not limited to,
277 participation by the resident or the resident's guardian in the selection
278 of the resident's alternative placement, explanation of alternative
279 placements and orientation concerning the placement chosen by the
280 resident or the resident's guardian; and (4) custodial care of all
281 property or assets of residents which are in the possession of an owner
282 of the facility. The receiver shall preserve all property, assets and
283 records of residents which the receiver has custody of and shall
284 provide for the prompt transfer of the property, assets and records to
285 the alternative placement of any transferred resident. In no event may
286 the receiver transfer all residents and close a facility without a court
287 order and without preparing a discharge plan for each resident in
288 accordance with section 19a-535.

289 Sec. 4. Section 19a-547 of the general statutes is repealed and the
290 following is substituted in lieu thereof (*Effective July 1, 2011*):

291 (a) The court may appoint any responsible individual [whose name
292 is] or entity proposed by the Commissioner of Public Health and the
293 Commissioner of Social Services to act as a receiver. [Such individual]
294 Any individual appointed shall be a nursing home administrator
295 licensed in the state of Connecticut with substantial experience in
296 operating Connecticut nursing homes. [On or before July 1, 2004, the]
297 provided no individual who is serving as a receiver for three or more
298 facilities may be appointed as a receiver. Any entity appointed shall
299 employ or contract with a nursing home administrator licensed in the
300 state of Connecticut with substantial experience operating Connecticut
301 nursing homes. The Commissioner of Social Services shall adopt
302 regulations, in accordance with the provisions of chapter 54, governing
303 the qualifications for proposed receivers consistent with the provisions
304 of this subsection. No state employee or owner, administrator or other
305 person with a financial interest in the facility may serve as a receiver
306 for that facility. No person or entity appointed to act as a receiver shall
307 be permitted to have a current financial interest in the facility; nor shall
308 such person or entity appointed as a receiver be permitted to have a
309 financial interest in the facility for a period of five years from the date
310 the receivership ceases. Notwithstanding the provisions of this
311 subsection, if an entity is appointed as a receiver, such entity may
312 employ or contract with the entity's affiliates to provide accounting,
313 payroll, information technology and related office support services
314 and the court may permit the entity to participate as a bidder in a sale
315 of the facility.

316 (b) The court may remove such receiver in accordance with section
317 52-513. A nursing home receiver appointed pursuant to this section
318 shall be entitled to a reasonable receiver's fee as determined by the
319 court, provided the receiver's fee shall not exceed two dollars and fifty
320 cents per patient per day. The receiver shall be liable only in [his] an
321 official capacity for injury to person and property by reason of the
322 conditions of the nursing home. [He] The receiver shall not be
323 personally liable, except for acts or omissions constituting gross, wilful
324 or wanton negligence.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>July 1, 2011</i>	17b-340(f)(4)
Sec. 2	<i>July 1, 2011</i>	17b-340
Sec. 3	<i>July 1, 2011</i>	19a-545(a)
Sec. 4	<i>July 1, 2011</i>	19a-547

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